

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LILLY INDUSTRIAL COATINGS, INC.

and

Case 25--CA--20738

LOCAL 7--168, OIL, CHEMICAL AND
ATOMIC WORKERS INTERNATIONAL
UNION, AFL--CIO

DECISION AND ORDER

By Members Chacraft, Devaney, and Oviatt

On August 6, 1990, the General Counsel of the National Labor Relations Board issued a complaint and on August 24, 1990, an amendment to complaint, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 25--RC--8793. (Official notice is taken of the "'record'" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed its answers to the complaint and the amendment to complaint admitting in part and denying in part the allegations in the complaint, as amended.

On September 26, 1990, the General Counsel filed a Motion for Summary Judgment and motion to strike portions of Respondent's answer.¹ On October 1, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

¹ Because we are granting the Motion for Summary Judgment, we find it unnecessary to rule on the motion to strike.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.² The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, Lilly Industrial Coatings, Inc., an Indiana corporation, is engaged in the manufacture, sale, and distribution of industrial coatings and related products at its facility in Indianapolis, Indiana, where, during the 12 months preceding issuance of the complaint, sold and shipped products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Indiana. We find that the Respondent is an employer engaged in

² The Respondent did not request review of the Regional Director's unit determination and, therefore, is deemed to have waived any objection to that determination. Sec. 102.67(f) of the Board's Rules and Regulations.

commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

On January 6, 1944, the Union, formerly known as United Gas, Coke & Chemical Workers of America, Local 168, affiliated with the C.I.O., was certified as the exclusive collective-bargaining representative of the employees in the unit set forth below.

All production and maintenance employees, including group leaders and truck drivers employed by the Employer at its Indianapolis, Indiana facility, BUT EXCLUDING clerical employees, laboratory technicians, laboratory workers, salesmen and all supervisory employees as defined in the Act.

On March 22, 1990, it was certified that the Union may bargain for all plant clerical employees employed by the Employer at its Indianapolis, Indiana facility as part of the unit described below.

At all times since March 22, 1990, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the following appropriate unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All production and maintenance employees, including all plant clerical employees, group leaders and truck drivers employed by the Employer at its Indianapolis, Indiana facility, BUT EXCLUDING clerical employees, laboratory technicians, laboratory workers, salesmen and all supervisory employees as defined in the Act.

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The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since March 31, 1990, the Union has requested the Respondent to bargain and, since that date, the Respondent has refused to bargain with the Union as the exclusive representative of all plant clerical employees as part of the overall unit. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after March 31, 1990, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Lilly Industrial Coatings, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 7--168, Oil, Chemical and Atomic Workers International Union, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees, including all plant clerical employees, group leaders and truck drivers employed by the Employer at its Indianapolis, Indiana facility, BUT EXCLUDING clerical employees, laboratory technicians, laboratory workers, salesmen and all supervisory employees as defined in the Act.

(b) Post at its facility in Indianapolis, Indiana, copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 31, 1990

Mary Miller Cracraft, Member

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 7--168, Oil, Chemical and Atomic Workers International Union, AFL--CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees, including all plant clerical employees, group leaders and truck drivers employed by the Employer at its Indianapolis, Indiana facility, BUT EXCLUDING clerical employees, laboratory technicians, laboratory workers, salesmen and all supervisory employees as defined in the Act.

LILLY INDUSTRIAL COATINGS, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 575 N. Pennsylvania Street, Room 238, Indianapolis, Indiana 46204-1577, Telephone 317--226--7413.